

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

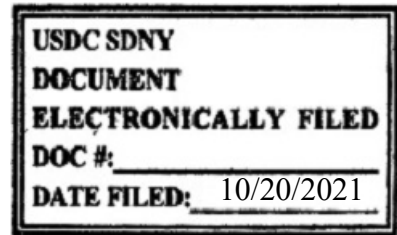
NICHOLAS DESIMONE, et al.

Plaintiffs,

-against-

TIAA BANK, FSB,

Defendant.



20-CV-6492 (AJN) (BCM)

ORDER

BARBARA MOSES, United States Magistrate Judge.

For the reasons stated on the record during the telephonic conference held on October 14, 2021, it is hereby ORDERED that:

Preliminary Discovery Issues

1. Contact Information for Opt-Ins

When defendant produces the contact information for all individuals who are to receive the notice approved by the district judge on October 6, 2021 (*see* Dkt. No. 158), it shall include information for all individuals eligible to receive that notice, whether or not they have already opted in.

2. Discovery Conformed to Memorandum Opinion and Order

To the extent this Court's order dated July 19, 2021 (July 19 Order) (Dkt. No. 146) required production of phone records and other documents outside of the applicable statute of limitations (as defined by the district judge in the Memorandum Opinion & Order dated September 14, 2021 (Opinion)), the Order is modified so that only records within the limitations period must be produced.

3. Interrogatories

In accordance with the parties' stipulation, set forth in their letter dated October 8, 2021 (Oct. 8 Ltr.) (Dkt. No. 159), they are relieved of the "subject matter limitations imposed by L. Civ. R. 33.3(a)." Oct. 8 Ltr. at 2.

Supplemental Responses to RFPs

As to all RFPs discussed in the July 19 Order *other than* RFPs 20 and 21, the named plaintiffs shall supplement their responses no later than **October 28, 2021**. If and to the extent a named plaintiff has failed to produce the requested documents in a given category because there are no responsive documents in his or her possession, custody, or control, the supplemental response shall plainly so state.

As to RFPs 20 and 21, the named plaintiffs shall produce responsive documents and supplement their written responses as soon as they are reasonably able to do so. If and to the extent a named plaintiff has failed to produce the requested documents in a given category because there are no responsive documents in his or her possession, custody, or control, the supplemental response shall plainly so state.

Additionally, as to RFP 20, if and to the extent a named plaintiff has failed to produce the "actual texts" of his or her relevant text messages because the actual texts were not preserved by or cannot be obtained from the plaintiff's carrier, the supplemental response shall plainly so state, and shall explain the basis for that statement. The named plaintiffs shall promptly investigate this issue and shall advise defendants, no later than **October 28, 2021**, whether it is necessary to serve new subpoenas on their carriers to obtain the actual texts.

Further Status and Scheduling Conference; Opt-In Discovery

The Court will conduct a further status and scheduling conference **at 10:00 a.m. on December 16, 2021**, in Courtroom 20A in the Daniel Patrick Moynihan United States Courthouse. No later than **December 9, 2021**, the parties shall submit a joint letter updating the Court on the progress of discovery as to the named plaintiffs; confirming that they have met and conferred in good faith regarding the scope of opt-in discovery; and advising the Court as to (a) what they have agreed upon with respect to opt-in discovery, (b) what they are continuing to negotiate, and (c) what, if anything, will require judicial resolution.

Dated: New York, New York
October 20, 2021

SO ORDERED.



BARBARA MOSES
United States Magistrate Judges